



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA ELECTRONIC MAIL

Michael J. Drury
President and CEO
Metalico Pittsburgh, Inc.
135 Dermody Street
Cranford, NJ 07016
mjdrury@metalico.com

**Re: Notice of Violation and Opportunity to Confer
Clean Air Act, Section 113(a)**

Dear Mr. Drury:

The U.S. Environmental Protection Agency ("EPA") is issuing the enclosed Notice of Violation and Opportunity to Confer ("NOVOC") to Metalico Pittsburgh, Inc. ("Metalico"). The EPA is issuing this NOVOC under Section 113(a) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(a). Based on information currently available and described in detail in the attached document, the EPA finds that Metalico is in violation of the provisions of the Pennsylvania State Implementation Plan ("SIP"), including Allegheny County Health Department's ("ACHD") Article XXI permitting requirements, and in violation of Title V of the CAA. Section 113(a) of the Act provides the EPA several enforcement options to resolve these violations.

By this letter, the EPA is extending to you an opportunity to advise the EPA, via a conference call, or in writing, of any further information the EPA should consider with respect to the alleged violations.

The EPA contact in this matter is Erin Willard and she may be reached at 215-814-2152 or willard.erinm@epa.gov. If you are represented by counsel, they may contact Humane Zia, Assistant Regional Counsel at (215) 814-3454 or zia.humane@epa.gov within thirty (30) days following receipt of this NOVOC, if Metalico would like to schedule such a conference.

Sincerely,

Karen Melvin, Director
Environmental & Compliance Assurance Division

Enclosure

cc: Glenda Wehrli, Metalico Pittsburgh (gwehrli@metalico.com)
Erin Willard, EPA (Willard.erinm@epa.gov)
Humane Zia, EPA (Zia.Humane@epa.gov)
Shannon Sandberg, ACHD (Shannon.Sandberg@AlleghenyCounty.US)



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474*

*Re: Notice of Violation and Opportunity to Confer
Metalico Pittsburgh, Inc.*

Dean DeLuca, ACHD (Dean.DeLuca@AlleghenyCounty.US)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, PA 19103**

In the Matter of:	:
	:
Metalico Pittsburgh, Inc.	: NOTICE OF VIOLATION AND
3100 Grand Avenue	: OPPORTUNITY TO CONFER
Pittsburgh, PA 15225	:
	: U.S. EPA Docket No. CAA-003-22-0001
	:
Respondent.	: Proceeding Pursuant to Section 113(a) of the
	: Clean Air Act, 42 U.S.C. § 7413(a)

NOTICE OF VIOLATION

This Notice of Violation and Opportunity to Confer (“NOVOC”) serves as the finding and notice required under Section 113(a) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(a). The EPA alleges that Metalico Pittsburgh, Inc. (“Metalico” or “Respondent”) has violated the Pennsylvania State Implementation Plan (“PA SIP”), including the Allegheny County Health Department’s (“ACHD”) Article XXI permitting requirements, and Title V of the CAA, at its metal scrap shredding facility located at 3100 Grand Avenue on Neville Island in Pittsburgh, Allegheny County, Pennsylvania. The authority to issue this NOVOC has been delegated to the Director of the EPA Region III’s Enforcement and Compliance Assurance Division.

I. STATUTORY AND REGULATORY BACKGROUND

1. The CAA, 42 U.S.C. §§ 7401, *et seq.*, establishes a comprehensive program to “protect and enhance the quality of the Nation’s air resources so as to promote the welfare and productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

National Ambient Air Quality Standards

2. Section 108(a) of the CAA, 42 U.S.C. § 7408(a) requires the Administrator of the EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. These pollutants are known as “criteria pollutants.”
3. Section 109 of the CAA, 42 U.S.C. § 7409 requires the EPA to promulgate regulations establishing primary and secondary national ambient air quality standards (“NAAQS”) for each criteria pollutant. The primary NAAQS shall be sufficient to protect the public health, allowing an adequate margin of safety, and the secondary NAAQS shall be sufficient to protect the public welfare from any known or anticipated effects associated with the presence of the air pollutants.
4. Pursuant to Section 108 and 109 of the CAA, 42 U.S.C. §§ 7408 and 7409, the EPA has identified ground-level ozone, among others, as a criteria pollutant, and has promulgated NAAQS for this pollutant.
5. Certain precursors to ozone formation, such as volatile organic compounds (“VOC”) and nitrogen oxides (“NO_x”), are regulated as part of the air quality standards for ozone itself. 40

Re: *Notice of Violation and Opportunity to Confer*
Metalico Pittsburgh, Inc.

C.F.R. §§ 50.6-50.11. Ozone is not typically emitted directly from sources of air pollution. Ozone is a photochemical oxidant formed when VOC and NO_x react in the presence of sunlight. VOC and NO_x are called “ozone precursors.” Sources that emit ozone precursors are regulated to reduce ground-level ozone. 62 Fed. Reg. 38,856 (July 18, 1997).

6. Under Section 107(d) of the CAA, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality either meets or does not meet the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular criteria pollutant is termed an “attainment area” with respect to such pollutant. An area that does not meet the NAAQS for a particular criteria pollutant is termed a “nonattainment area” with respect to such pollutant.
7. Pursuant to Section 181 of the CAA, 42 U.S.C. § 7511, each area designated nonattainment for ozone shall be classified at the time of such designation as a marginal, moderate, serious, severe or extreme area. At all times relevant to this NOV, Allegheny County, Pennsylvania, has been classified by EPA as a marginal nonattainment area for ozone. 40 C.F.R. § 81.339.
8. Section 110(a) of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a plan that provides for the implementation, maintenance, and enforcement of each of the NAAQS. Such plans, once approved by EPA, are known as State Implementation Plans or SIPs.
9. Each SIP must include enforceable emission limitations and other control measures, and regulation of the modification and construction of any stationary source within the areas covered by the SIP as necessary to meet the applicable requirements of the CAA. 42 U.S.C. § 7410(a)(2).
10. Once EPA has approved a SIP, the federal government may enforce the SIP’s requirements and prohibitions pursuant to Section 113(a) and (b) of the CAA. *See* 42 U.S.C. § 7413(a) and (b).

The Pennsylvania State Implementation Plan

11. Pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, and Sections 4(1) and 5 of the Pennsylvania Air Pollution Control Act (“APCA”), 35 P.S. §§ 4004(1) and 4005, the Commonwealth of Pennsylvania adopted regulations that comprise the PA SIP. The PA SIP regulations as approved by the EPA are set forth in 40 C.F.R. § 52.2020(c)(2).
12. The PA SIP regulations governing permitting for stationary source operations are currently codified at 25 Pa. Code Ch. 127. Relevant portions of Chapter 127 were included in the PA SIP approved by the EPA on July 30, 1996. 61 Fed. Reg. 39,597 (July 30, 1996), *as amended*.
13. The ACHD is a local health agency organized under Pennsylvania’s Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 P.S. 12001 et. seq. The ACHD has its own regulations governing the air resources in Allegheny County, known as “Air Pollution Control Regulations” or “Article XXI”.
14. The ACHD’s Article XXI Part C (Operating Permits) regulations relevant to this NOV were granted full approval by EPA, effective December 17, 2001, 66 Fed. Reg. 55,112 (November 1, 2001).

Re: *Notice of Violation and Opportunity to Confer*
Metalico Pittsburgh, Inc.

15. The ACHD Article XXI regulations relevant to this NOV were included in the PA SIP, as specified below and in 40 C.F.R. 52.2020(c)(2). *See*, 67 Fed. Reg. 68,935 (Nov. 14, 2002).

Pennsylvania New Source Review

16. Pursuant to Subchapter E (New Source Review), 25 Pa. Code §§ 127.201-127.218, of the PA SIP, “[a] person may not cause or permit the construction or modification of an air contamination facility in a nonattainment area or having an impact on a nonattainment area unless the Department or an approved local air pollution control agency has determined that the requirements of this subchapter have been met”. 25 Pa. Code § 127.201(a). This determination is referred to as “New Source Review” or “NSR” and is made in accordance with 25 Pa. Code § 127.203a (Applicability Determination).
17. Pursuant to ACHD’s Article XXI § 2102.06.a of the PA SIP, which incorporates provisions of the APCA New Source Review regulations at 25 Pa. Code 127.201 through 127.205, the NSR requirements within Allegheny County “shall apply to any new major facility, as defined by 25 Pa. Code 121.1 and to any major modification of an existing source” located in an ozone transport region.
18. The Commonwealth of Pennsylvania is included within the ozone transport region established under CAA Section 184(a), 42 U.S.C. § 7511c(a).
19. At all times relevant to this NOV, the PA SIP has included the following definitions:
 - a. “Major Facility” is defined to include “[a] facility which emits or has the potential to emit ... [f]ifty TPY of VOCs in an area within an ozone transport region. . . .” 25 Pa. Code § 121.1.
 - b. “New source” is defined at 25 Pa. Code § 121.1 of the PA SIP to include “[a] stationary air contamination source which was constructed and commenced operation on or after July 1, 1972.” 25 Pa. Code § 121.1.
20. Pennsylvania’s NSR requirements “apply to a facility located in an attainment area for ozone and within an ozone transport region that emits or has the potential to emit at least 50 TPY of VOC.” 25 Pa. Code 127.201(c). In addition, “[a] facility within either an unclassifiable/attainment area for ozone or within a marginal or incomplete data nonattainment area for ozone or within a basic nonattainment area for ozone and located within an ozone transport region will be considered a major facility and shall be subject to the requirements applicable to a major facility located in a moderate nonattainment area.” *Id.*

CAA Title V Permitting Program

21. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), directs each state to develop a permit program under state or local law that meets the requirements of Title V of the CAA for review and approval by EPA.. Once approved by EPA, the state air pollution control agency is authorized to administer its own Title V operating permit program.

Re: *Notice of Violation and Opportunity to Confer*
Metalico Pittsburgh, Inc.

22. Section 502(e) of the CAA, 42 U.S.C. § 7661a(e), authorizes EPA to retain the authority to enforce Title V operating permits issued by a state.
23. ACHD's Title V Partial Operating Permit Program is governed by ACHD's Article XXI, which was granted final approval by EPA, effective December 17, 2001. 66 Fed. Reg. 55,112 (Nov. 1, 2001). ACHD issues and administers operating permits under Title V of the CAA for facilities located in Allegheny County, Pennsylvania.
24. Pursuant to ACHD Article XXI Part C, § 2103.10.b., no source within Allegheny County may be operated or allowed to operate except in compliance with an operating permit issued under Part C.
25. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and EPA's regulations at 40 C.F.R. § 70.7(b) prohibit the operation of a major source except in compliance with a permit issued by a permitting authority under Title V of the CAA.
26. Section 502(e) of the CAA, 42 U.S.C. § 7661a(e), authorizes EPA to retain the authority to enforce Title V operating permits issued by a state.
27. At all times relevant to this NOV, the PA SIP has included the following definitions:
 - a. "Source" is defined as any place, structure, building, facility, equipment, installation, operation, activity, or other thing or any combination thereof: a. [a]t, from, or by reason of which there may be emitted into the outdoor atmosphere any air contaminant; b. [w]hich is located on one or more contiguous or adjacent properties; and c. [w]hich is owned, operated, or allowed to be operated by the same person or by persons under common control or which is jointly owned, operated, or allowed to be operated by two or more persons. . . ." Article XXI, § 2101.20.
 - b. "Major source" is defined to include "any stationary source, or any group of stationary sources, that is located on one or more contiguous or adjacent properties, is under common control of the same person . . . and. . . (e) [f]or ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with the potential to emit, including fugitive emissions, 50 tpy or more of volatile organic compounds." Article XXI, § 2101.20
 - c. "Potential to emit" is defined, in pertinent part, as "the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by [EPA] and citizens under the Clean Air Act." Article XXI, § 2101.20.
 - d. "Title V facility" is defined to include, among other things, "(iii) [a] major stationary source as defined in Title I, Part D of the Clean Air Act (42 U.S.C.A. §§ 7501—7515), including: . . . (B) For ozone transport regions established under section 184 of the Clean

Re: *Notice of Violation and Opportunity to Confer*
Metalico Pittsburgh, Inc.

Air Act (42 U.S.C.A. § 7511c), sources with the potential to emit 50 tpy or more, of VOCs. . . .” 25 Pa. Code § 121.1.

II. FACTUAL BACKGROUND

28. Metalico is the owner and operator of a metal scrap shredding facility (SIC Code 5093), located at 3100 Grand Ave on Neville Island, Pittsburgh, Allegheny County, PA 15202 (hereinafter “the Facility”). The Facility is bounded by Grand Avenue to the south, the Ohio River to the north, a large building owned by Triad Metals International to the west, and a company known as Mr. John to the east.
29. Metal shredding operations began at the Facility in about November 2004.
30. The Facility was issued a Minor Source Operating Permit #0692 (“Permit #0692”) by ACHD on August 21, 2007.
31. Permit #0692 (Section IV, Condition 4) requires that Metalico “shall not conduct, or allow to be conducted, any materials handling operation in such manner that emissions from such operation are visible at or beyond the property line,” pursuant to Article XXI, § 2104.05. Article XXI, § 2104.05 was approved by EPA as part of the PA SIP on November 14, 2002. 67 Fed. Reg. 68,935 (Nov. 14, 2002).
32. Permit #0692 (Section IV, Condition 20) requires that “No person shall transport, or allow to be transported, any solid or liquid material outside the boundary line of any source for which a permit is required by Article XXI Part C [Operating Permits] in such manner that there is any visible emission, leak, spill, or other escape of such material during transport,” pursuant to Article XXI, § 2105.43. Article XXI, § 2105.43 was approved by EPA as part of the PA SIP on November 14, 2002. 67 Fed. Reg. 68,935 (Nov. 14, 2002).
33. On August 8, 2018, the EPA conducted a CAA inspection (“Inspection”) at the Facility to verify its compliance with applicable State and Federal regulations.
34. On September 25, 2018, the EPA sent Metalico an Air Compliance Inspection Report, summarizing the EPA’s Inspection at the Facility.
35. By a letter dated October 31, 2019, the EPA sent Metalico a “Notice of Noncompliance/Opportunity to Show Cause” (“NON”), describing potential violations of the PA SIP and the CAA at the Facility identified by the EPA after further investigation of the Facility’s operations following the Inspection.
36. By email on November 21, 2019, the EPA provided Metalico with the emissions values used by EPA to evaluate the Facility’s compliance. Subsequently, by email on July 30, 2020, the EPA provided Metalico with the performance test data it used to evaluate the Facility’s compliance with applicable CAA requirements, which previously had been compiled and made public through EPA’s Freedom of Information Act (“FOIA”) process, as FOIA number EPA-R3-2020-003297.

Re: *Notice of Violation and Opportunity to Confer*
Metalico Pittsburgh, Inc.

37. The EPA has collected data from performance test reports from similar metal shredding facilities located across the United States, with feedstocks and feed rates comparable to Metalico's Facility.
38. The data from these performance test reports, referenced above in Paragraphs 36 and 37, was used by the EPA to formulate Metalico's PTE VOC for the metal shredder at its Facility. Utilizing the emissions data from these performance test reports, along with the maximum throughput of the Facility's shredder and maximum operational hours, the EPA calculated Metalico's PTE VOC to be at least 50 TPY.
39. On September 16, 2020, EPA and Metalico met by conference call to discuss the NON. During the meeting, Metalico presented its analysis of the emissions values and performance test data provided by EPA to Metalico.
40. In a partnership with Carnegie Mellon University, a local community group known as Allegheny Clean Air Now ("ACCAN") operates a camera located in Emsworth, Pennsylvania, on the north bank of the Ohio River directly opposite the Facility. The camera is trained on the Facility 24 hours a day, seven days a week. The camera has been in place since approximately July 2018 and records still photographs every five seconds, with each photograph timestamped in a format of Hours:Minutes:Seconds and viewable in a video-like display. All photographic data is available for viewing online at <https://accancamera.com/>.
41. EPA has reviewed ACCAN's photographic data of the Facility and identified photographs, on the following dates and times during Metalico's normal business hours, in which emissions from the Facility's material handling operations are seen, after steam from the shredder has recondensed and is no longer visible, at or beyond the Facility's property boundaries:
 - a. May 25, 2021 at 13:21:05, 14:10:50, 14:11:55, and 14:14:35;
 - b. May 26, 2021 at 12:46:05 and 12:47:25; and
 - c. September 14, 2021 at 07:29:25 through 07:31:15, 07:33:30 through 07:40:30, and 07:39:00.

III. FINDINGS OF VIOLATIONS

Construction of an Air Contamination Source Without Approval

42. Metalico's Facility is located in Allegheny County, PA and has the PTE at least 50 TPY of VOC, therefore, the Facility is a major facility pursuant to 25 Pa. Code § 121.1 and 25 Pa. Code § 127.201(c).
43. Metalico's Facility is subject to New Source Review pursuant to 25 Pa. Code § 127.201(c).
44. Metalico constructed the metal shredder at its Facility in about November 2004 without prior New Source Review and approval by ACHD, as required by 25 Pa. Code §§ 127.201(a) and 127.203a, which are incorporated by reference by ACHD Article XXI § 2102.06.a of the PA SIP.
45. Metalico's failure to comply with 25 Pa. Code §§ 127.201(a) and 127.203a is a violation of the PA SIP, 40 C.F.R. § 52.23, and Section 113 of the CAA, 42 U.S.C. § 7413.

Re: *Notice of Violation and Opportunity to Confer*
Metalico Pittsburgh, Inc.

Failure to Operate Without a Title V Operating Permit

46. Metalico's Facility is located in Pittsburgh, Allegheny County, PA and has the PTE at least 50 TPY of VOC.
47. Metalico's Facility is a "Title V Facility," as defined in 25 Pa. Code § 121.1, because it is a "major stationary source" as defined in Title I, Part D of the CAA (42 U.S.C. §§ 7501--7515) as it is located in an ozone transport region and has the PTE at least 50 TPY VOC.
48. To date, Metalico has operated its Facility without obtaining a Title V operating permit from ACHD.
49. Metalico's operation of its Facility without a Title V operating permit is a violation of ACHD Article XXI § 2103.10.b. and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

Violation of the Minor Operating Permit

50. Emissions from Metalico's material handling operations were visible at or beyond the Facility's western property line, during the Facility's hours of operation on May 25, 26 and September 14, 2021, based on EPA's review of the camera data as described above in Paragraphs 40 and 41.
51. Metalico's failure to conduct its material handling operations such that visible emissions from such operations are not visible at or beyond the Facility's property line is a violation of the Facility's Permit #0692 Conditions #4 and #20, ACHD Article XXI §§ 2104.05 and 2105.43, the PA SIP, and 40 C.F.R. § 52.23.

IV. ENFORCEMENT PROVISIONS

52. Section 113(a) of the CAA, 42 U.S.C. § 7413(a), provides that whenever on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable SIP or Title V of the CAA, the Administrator has several enforcement options to resolve these violations.
53. The EPA is extending to Metalico an opportunity to advise the EPA, via a conference call or in writing, of any further information the EPA should consider with respect to the alleged violations. Please reply, within thirty (30) calendar days following receipt of this letter to Erin Willard at willard.erinm@epa.gov, or if you are represented by counsel, to Humane Zia, Assistant Regional Counsel, at zia.humane@epa.gov, as to whether Metalico would like to schedule such a conference. The EPA may pursue enforcement options if there is no response to this letter.

Date

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA, Region III